A

MULTI-PURPOSE CREDIT SDN BHD v. KETUA PENGARAH HASIL DALAM NEGERI

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
AZIMAH OMAR JCA
B AHMAD KAMAL MD SHAHID JCA
[CIVIL APPEAL NO: B-01(A)-666-12-2023]
23 SEPTEMBER 2025

C **Abstract** – *(i) Section 30(4) of the Income Tax Act 1967 is the sole lex specialis specifically addressing and setting the rule on the appropriate tax treatment as to debt ('any sum payable, rent payable or expense incurred of the kind') incurred 'prior to the relevant period' which later during the 'relevant period' the debt is released. Its plain and vivid purpose is to govern the instance of waiver or release of debt so as to avoid duality or redundancy of collection. The provision remains relevant and applicable for the court to identify the proper tax treatment in the instance of a waiver of debt; (ii) It is a plain and immutable rule that the Revenue is not allowed to impose redundant tax so as to enable the Revenue to make a collection that goes beyond the actual fiat benefit that is enjoyed by the taxpayer.*

REVENUE LAW: *Income tax – Deductibility – Whether taxpayer had been fully taxed on loan amount by not deducting loan debt as deductible operating expense during preceding year of assessment before loan debt eventually waived – Whether loan debts waived during relevant year of assessment treated as taxable income – Applicability of s. 30(4) of Income Tax Act 1967 ('ITA') – Interpretation of – Whether lex generalis in ss. 4 and 22 of ITA applicable – Whether categorisation of loan debt carried material impact against tax treatment – Whether Revenue entitled to impose second tax collection against waived debt – Whether Revenue's notices for additional assessments and penalties unlawful and invalid*

This was an appeal against the decision of the High Court Judge ('HCJ') in affirming the Special Commissioner of Income Tax's ('SCIT') decision that the loan debts which were waived during the relevant/subject year of assessment shall be treated as taxable income despite the admitted and undisputed fact that the taxpayer had already been fully taxed on the loan amount (by not deducting the loan debt as a deductible operating expense/liability and instead treating the loan as a gross income) during the preceding year of assessment ('YA') before the loan debt was eventually waived. For the sake of brevity and clarity, the prior YA in which the loan debt was incurred shall be referred to as 'X' ('(X)/YA(X)') while the subject YA in which the loan debt was eventually waived shall be referred to as 'Y' ('(Y)/YA (Y)'). The entirety of the appeal solely rested upon the proper

interpretation and the true effects of s. 30(4) of the Income Tax Act 1967 ('ITA'). During the YA (X), the taxpayer/appellant ('taxpayer') owed loan borrowings to the sum of RM77,305,831 to Multi-Purpose Capital Holdings Berhad ('MP Capital') and RM157,036 to Multi-Purpose Venture Partners Sdn Bhd ('MP Venture') totalling up to RM78,462,867 ('debt sum/waived sum/loan sum/fiat benefit'). The taxpayer's primary business was essentially trading and dealing with credit services, facilities, and loans. The debt sum was incurred in the form of loans granted by MP Capital and MP Venture to the taxpayer in order to enable the taxpayer to conduct its primary business. Despite the debt sum being a deductible liability/business operating expense that could shave off the taxpayer's taxable income during (X), it was admitted and undisputed by all parties that the taxpayer did not claim for tax release (deduction) during (X). Thus, the final taxable income during (X) that was indeed taxed against the appellant was inclusive of the debt sum owed to MP Capital and MP Venture. In essence, despite MP Capital and MP Venture being able to shave off their respective taxable incomes by disbursing the debt sum, the debt sum was still taxed *via* the appellant's taxable income during YA (X). Thus, it remained irrefutable that the Revenue had already had the benefit of collecting/taxing against the debt sum *via* the appellant-taxpayer's taxable income ('the subject collection') during (X) (despite the appellant's entitlement for tax release (deduction) during (X)). Thereto, notwithstanding the manner of movement of the monies when the debt sum was incurred, the Revenue was still able to make (and have the benefit of) the subject collection (at the expense of the appellant who willingly opted out of tax release during (X)). The issues that arose for determination were; (i) whether s. 30(4) of the ITA was irrelevant and inapplicable; (ii) whether it was correct for the HCJ and the SCIT to apply the *lex generalis* in ss. 4 and 22 of the ITA in the case for waiver of debt; (iii) whether the Revenue was entitled to impose a second tax collection against the waived debt during (Y) despite having collected against the loan sum during (X); and (iv) whether the categorisation of the loan debt (as capital expenditure purposes ('CAPEX') or operating expenses purposes (OPEX)) in the specific circumstance of this case would carry any material impact against the appropriate tax treatment.

Held (allowing appeal)
Per Azimah Omar JCA delivering the judgment of the court:

(1a) The plain and vivid purpose of s. 30(4) of the ITA is to govern the instance of waiver or release of debt so as to avoid duality or redundancy of collection during YA (Y). If the Revenue had already collected tax during YA (X) (tax against RM78 million loan when there was no deduction claimed), and later during YA (Y) also collected tax against the waiver of the same RM78 million, it equalled to tax collection against a total of RM156 million. This was certainly excessive as the taxpayer at the very most had only 'obtained fiat

A benefit' of RM78 million. Despite the technicality that the taxpayer had obtained a loan of RM78 million during (X) and later 'obtained' the release of the RM78 million loan, did not at all mean that the taxpayer had obtained RM78 million twice. The 'obtainment' of the release did not mean a 'repeated gain' of the same RM78 million sum B but instead only meant that the taxpayer need not fork out RM78 million out of its own monies to repay the lender. The fact remained that if there should be any collection against the loan sum, there should only be one singular collection on the singular net fiat benefit of the RM78 million. It was wrong and rapacious for the Revenue to C assume that the incurring of the debt sum as a loan and the eventual waiver of the loan to be two separate and distinct 'gains'. (para 32)

(1b) Entirely relevant to the appeal herein, s. 30(4) of the ITA is the sole *lex specialis* specifically addressing and setting the rule on the appropriate tax treatment as to debt ('any sum payable, rent payable D or expense incurred of the kind') incurred 'prior to the relevant period' which later during the 'relevant period', the debt was released. Just because the taxpayer here had not made a deduction during (X) did not at all render the entirety of this *lex specialis* to be either distinguishable or inapplicable to this appeal. It was erroneous for E both the taxpayer and the Revenue to 'concede' or agree that s. 30(4) of the ITA did not apply to this appeal. (para 38)

(1c) Section 30(4) of the ITA is a deeming provision. The provision remained entirely relevant and applicable even when the taxpayer did not claim for deduction during (X). It was equally perplexing when the F taxpayer also conceded that the provision did not apply. However, contrary to the taxpayer's accedence, the taxpayer in its additional submission on the provision still insisted that the *lex specialis* rule to still apply and thus the waived sum could not fall within the general law of s. 4 of the ITA. Therefore, the only logical summation of the G taxpayer's submission would be that the 'charging effect' of s. 30(4) of the ITA did not apply (due to the non-deduction), but the provision as a 'deeming' provision shall still remain relevant and applicable to determine the proper tax treatment upon the waived sum. Succinctly, the inverse applied – that since the debt sum was fully taxed during (X) (no deduction), thus the waived sum shall not be treated as taxable H income in (Y). (paras 39 & 40)

(2) Both ss. 4 and 22 of the ITA are absolutely silent and do not provide any proper mechanism to avoid tax redundancy in instances of waiver of debt. Hence, the exact reason the Parliament saw it fit to legislate I s. 30(4) of the ITA. Had the Parliament intended that the taxpayer ought to be imposed redundant tax on the waiver in (Y) notwithstanding the fact that the taxpayer had not deducted the loan

(and was already taxed) during (X), then the Parliament would not even have drafted s. 30(4) into the statute. The HCJ and the SCIT were in grave error to apply the *lex generalis* in ss. 4 and 22 of the ITA in the case for waiver of debt. (para 65)

(3) The ITA as a statute had already identified the futility in the exercise of determining whether the waiver of a debt is a 'taxable gain' or otherwise. From the clear and unequivocal language of s. 30(4) of the ITA, the sole determinant (on whether a waiver during (Y) ought to be treated as gross income or not), was whether the loan debt was deducted in (X) or not. At the material point in time during (Y), the law was not concerned whether or not the loan was OPEX or CAPEX in nature. The prevailing nature of the loan (whether CAPEX or OPEX) was only relevant during (X) when the loan was first disbursed. During which time, the taxpayer could either deduct the disbursed loan for its OPEX purposes, or tax the disbursement as income for CAPEX purposes. Subsequent to the tax treatment during (X), the only factor relevant during (Y) was whether or not the loan sum had already been taxed during (X). If tax had been collected during (X) (no deduction claimed) then the Revenue ought not be allowed to impose redundant tax against the same gain during (Y). If tax had not been collected during (X) (deduction claimed) then the Revenue ought to be allowed to collect tax against the loan sum during (Y). The HCJ and the SCIT had fallen in grave error in finding that the Revenue was entitled to impose a redundant second tax collection against the waived debt during (Y) despite having collected against the loan sum during (X). The Revenue was not allowed to impose redundant tax so as to enable the Revenue to make a collection that went beyond the actual fiat benefit that was enjoyed by the taxpayer. (paras 66-69)

(4) The categorisation of the loan debt (as CAPEX or OPEX) in the specific circumstance of this case would not carry any material impact against the appropriate tax treatment. The loan categorisation was only relevant during (X) when the taxpayer would have to identify whether or not the loan disbursed should be deducted for tax release. Subsequent to that in (Y), the law is only concerned on whether or not the loan sum was already taxed during (X). Thus, the appropriate tax treatment during (Y) remained unmoved. Whether or not the loan sum was CAPEX or OPEX in nature, what was relevant to be considered was whether or not the loan sum was taxed during (X). Since the loan sum was already taxed during (X), then the Revenue had already fully taxed the full fiat benefit on the loan disbursed. Thereby, the Revenue could no longer impose yet another tax on the same amount during the

A waiver in (Y). There were clear merits in the appeal. Therefore, the High Court's decision was set aside, and thus all of the Revenue's notices for additional assessments and penalties were unlawful and invalid. (paras 70-72)

B **Case(s) referred to:**
ALF Properties Sdn Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri [2005] 3 CLJ 936 CA ***(refd)***
FT Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri (2016) MSTC 10-057 ***(dist)***
Ketua Pengarah Hasil Dalam Negeri v. ABTP Marketing Sdn Bhd [2023] CLJU 2547; [2023] 1 LNS 2547 CA ***(refd)***
C *Ketua Pengarah Hasil Dalam Negeri v. Bandar Nusajaya Development Sdn Bhd (2016) MSTC 30-117* ***(refd)***

Legislation referred to:
Income Tax Act 1967, ss. 4, 22, 30(4), 33(1)(a), Schedule 3

For the appellant - S Saravana Kumar & Tan Jia Hua; M/s Rosli Dahlan Saravana
D *Partnership*
For the respondent - Normareza Mat Rejab, Syazana Safiah Rozman & Muhammad Danial Izzat Zulbahari; Inland Revenue Board of Malaysia

[Editor's note: Appeal from High Court, Shah Alam; Civil Appeal No. BA-14-4-10-2022 (overruled).]

E *Reported by Suhainah Wahiduddin*

JUDGMENT

Azimah Omar JCA:

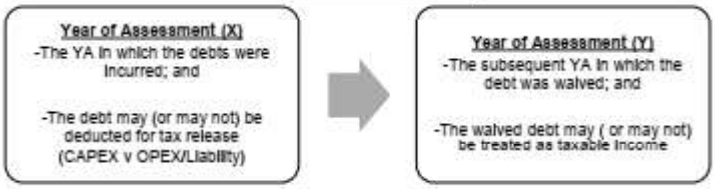
F **Background Facts And Tax Law On Waived Debts**

[1] Normally, we would address the background facts separately before we delve into the laws surrounding the factual matrix. However, having heard the oral and written submissions by both parties, we find that the subject matter of this appeal is complex and overwhelming in concepts
G involving accounting, trading, and taxation (more so than it is a facts-laden case). Thus, we are of the view that it is appropriate for us to directly discuss the law and the technical concepts as and when they arise as we gradually open up the facts of the appeal.

H **[2]** The appeal before us is an appeal against the learned High Court Judge's ("learned judge") decision in affirming the Special Commissioner of Income Tax's ("SCIT") decision that the loan debts which were waived during the relevant/subject year of assessment shall be treated as taxable income despite the admitted and undisputed fact that the taxpayer already had been fully taxed on the loan amount (by not deducting the loan debt as
I a deductible operating expense/liability and instead treating the loan as a gross income) during the preceding year of assessment ("YA") before the loan debt was eventually waived.

[3] For the sake of brevity and clarity, the prior YA in which the loan debt was incurred shall be referred to as 'X' ("(X)/YA (X)") while the subject YA in which the loan debt was eventually waived shall be referred to as 'Y' ("(Y)/YA (Y)"). For a pictorial understanding of (X), and (Y), illustration A below refers:

ILLUSTRATION A


Year of Assessment (X)
-The YA in which the debts were incurred; and
-The debt may (or may not) be deducted for tax release (CAPEX v OPEX/Liability)
Year of Assessment (Y)
-The subsequent YA in which the debt was waived; and
-The waived debt may (or may not) be treated as taxable income

[4] The entirety of the appeal solely rested upon the proper interpretation and the true effects of s. 30(4) of the Income Tax Act 1967 ("ITA"). The dissonance and befuddling nature of the provision was so acute that even the parties were still at extreme odds with each other despite being in agreement that somehow the provision 'did not apply' in the appeal before us. So much so, during the hearing of the appeal, the parties were ordered to submit further submissions specifically on their respective approaches on 'how' the provision 'did not apply' and how a forgiven debt should be treated in relation to their respective answers.

[5] We thread carefully upon all our references on how the provision 'did not apply' as it gradually became apparent to us that both parties clearly were not mutually referring to the singular *locus classicus* meaning of a provision being not applicable (in that the provision is not relevant to be considered upon the facts of the appeal).

[6] It was clear to us that despite the taxpayer-appellant's agreement of the provision being 'inapplicable', the taxpayer remained steadfast that the same provision remains 'relevant' as the *lex specialis* to determine how the waived debt during (Y) ought to be treated when there was no tax release (deduction) enjoyed during (X).

[7] As a matter of fact, the Revenue's admission and agreement of the inapplicability of the provision is the pinnacle of puzzlement, as the inapplicability of the provision to yield/charge the waived debt as taxable income under the very provision would directly contradict the Revenue's insistence on taxing the waived debt as income.

[8] This conundrum shall be yielded to legal logic and reason further in this judgment. At this early juncture it is only apt for us appreciate the background facts culminating this appeal.

[9] During the YA (X), Multi-Purpose Credit Sdn Bhd ("taxpayer/appellant") owed loan borrowings to the sum of RM77,305,831 to Multi-Purpose Capital Holdings Berhad ("MP Capital") and RM1,157,036 to Multi-Purpose Venture Partners Sdn Bhd ("MP Venture") totalling up to RM78,462,867 ("debt sum/waived sum/loan sum/fiat benefit").

[10] The taxpayer's primary business is essentially trading and dealing with credit services, facilities, and loans. The debt sum was incurred in the form of loans granted by MP Capital and MP Venture to the taxpayer in order to enable the taxpayer to conduct its primary business.

[11] Despite the debt sum being a deductible liability/business operating expense that could shave off the taxpayer's taxable income during (X), it was admitted and undisputed by all parties that the taxpayer did not claim for tax release (deduction) during (X). Thus, the final taxable income during (X) that was indeed taxed against the appellant was inclusive of the debt sum owed to MP Capital and MP Venture.

[12] In essence, despite MP Capital and MP Venture being able to shave off their respective taxable incomes by disbursing the debt sum, the debt sum was still taxed *via* the appellant's taxable income during YA (X). Thus, it remains irrefutable that the Revenue had already had the benefit of collecting /taxing against the debt sum *via* the appellant-taxpayer's taxable income ("the subject collection") during (X) (despite the appellant's entitlement for tax release (deduction) during (X). Thereto, notwithstanding the manner of movement of the monies when the debt sum was incurred, the Revenue was still able to make (and have the benefit of) the subject collection (at the expense of the appellant who willingly opted out of tax release during (X)).

[13] Thereafter, during the ensuing YA (Y), both MP Capital and MP Venture had waived the debt sum owed by the taxpayer. Thus, upon the waiver of the debt sum, the debt sum no longer materializes as an actual deductible liability/expense. Now:

(i) if the appellant had indeed claimed for tax release (by deducting the debt sum as an operating expense/liability) during YA (X), then the appellant would have already enjoyed a tax release during (X). Thus, since the appellant had already enjoyed tax release during X, then it is only just for the Revenue to make collection during (Y) when the debt was forgiven, as the Revenue had not yet made a collection against the appellant's eventual pure gain (*via* debt forgiveness); or

(ii) if the appellant had not claimed for tax release during YA (X), then the appellant has not enjoyed any tax release during (X) (when the appellant should have been afforded a tax release on the debt sum prior to the waiver). Thus, since the Revenue had already fully taxed the taxpayer on the entire loan sum during (X), then it is only just for the appellant to not be imposed taxed again on the same fiat benefit during (Y) when the debt sum was waived.

[14] It is not so much an argument whether or not the waived sum was a taxable gain or otherwise but merely the issue of the having both the taxpayer and the Revenue in check as to the appropriate amount of actual sum of monies that was actually taxable. Instance being, if the taxpayer did not claim for tax release on the debt sum during (X), then the taxpayer would already have to face the full brunt of taxation on the debt sum during (X). Simply put, the taxpayer had already paid full tax against the loan sum. Thus, it is only fair and just that for the purposes of subsequent taxation during (Y), that the law deems and accepts that the tax on the released loan sum during (Y) had already been paid for in advance during (X).

[15] Nevertheless, it is pertinent to determine the appropriate tax treatment against this fiat benefit specifically during (X). The fact of the matter is, notwithstanding the nature of the eventual use of the fiat benefit and notwithstanding the eventual waiver of the loan debt, the maximum extent that the taxpayer can be taxed is only up to the amount of the fiat benefit itself. The eventual waiver of the loan sum does not mean that the taxpayer would enjoy 'additional' monies beyond the fiat benefit.

[16] In our examination into numerous precedents discussing on the deductibility of a loan under s. 33 of the ITA, most cases were dealing with the deductibility of the surrounding 'fees' or 'interests' incurred in obtaining the loan as an operating expense. Thus, the precedents do not indicate whether in those cases, either the loan disbursed itself was from the outset not put to tax (deducted as an operating expense/liability), or the loan was indeed taxed or treated as an income (which a loan typically should not).

[17] We are pressed to remark that neither the learned judge (in her grounds of judgment) nor learned counsel for both the taxpayer and the Revenue (despite being asked for clarification) was able to clearly explain to us what they truly mean when they mutually admitted that 'the loan was not deducted' in the appeal before us. Hence, there are two possible scenarios. In the first scenario, the interest that followed the loan was not claimed as a deductible operating expense to ascertain the adjusted income and in the second, the loan disbursed itself was not deducted and was put to tax during (X).

[18] This burning issue is significantly pertinent as the tax treatment upon the loan itself (not the surrounding expense to the loan) would affect the tax treatment at the time when the loan was eventually waived. This is because rudimentary knowledge on accounting and finance would outright identify that a loan is not an income and is instead a credit liability (and thus ought not be brought to tax). Thus, when learned counsel for both parties had acknowledged that the taxpayer had not claimed for a deduction against the loan, we are under the impression and understanding that the taxpayer (when the loan was obtained and disbursed) had not deducted the loan from its income and thereby the loan sum had been put to the full effect of taxation.

[19] Even when learned counsel for both the parties were asked to clarify, we were met with ambiguous answers and even contradictions. When we asked learned counsel for the taxpayer on the 'mechanism' of deductions against a loan under the ITA, learned counsel answered that only the loan's interest was a deductible. However, aside from the loan interest being a deductible expense, the taxpayer's learned counsel had not clearly explained whether or not the loan itself was put to tax during (X). The confusion further deepened when the same clarification was asked to the Revenue's learned counsel. Learned counsel for the Revenue instead explained that both the loan principal and loan interest are deductible and can later be waived under s. 30(4) of the ITA:

> Judge
>
> That's what you said earlier, in any loan situation, my understanding is only the interest is deductible.
>
> Respondent counsel (for the Revenue)
>
> Yes only interest is deductible. **Interest plus the principal Yang Arif because, can we take a look at section 30 subsection 4** ... because if we see the wording, the last paragraph ... under Section 4(b) the whole sum, any part of the debt in respect of any such expense, rent or expenditure is released in the relevant period, the amount released shall be treated as gross income. **So what is being released? It's the loan. So the loan and part of the loan is interest**.
>
> (emphasis added)

[20] Thus, this further enforces our understanding that as a general rule, the obtainment of a loan liability is never an income and can either be a deductible expense or a deductible credit liability *in limine*. Hence the reason all cases dealing with deductibility of loans had only discussed the deductibility of its surrounding interest or fees.

[21] Therefore, we have collated the parties' submission and the learned judge's grounds of judgment and thus, are of the understanding that here lies a distinctly unique case where a loan (a credit liability and not an income) had not been deducted and had in fact been taxed by the Revenue. This is further reinforced by the taxpayer's vehement contention to distinguish its case from the case of *FT Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* (2016) MSTC 10-057 ("*Felda Trading*"). In *Felda Trading*, the SCIT also dealt with the taxability of a loan debt which was later forgiven. However, distinguishable from the appeal before us, the RM30 million loan in *Felda Trading* was deducted as an operating expense. Thus, first proving that a loan as a liability can be deducted and be released from tax:

> 3. The Respondent is of the view that the RM30 Million loan **which was deducted under Section 33(1) of the Act as an operating expense in computing the adjusted income of the appellant**.

> I find that the **real character of the RM30 million loan was part of the operating expenses of the appellant**.
>
> (emphasis added)

[22] Learned counsel for the taxpayer submitted in para. 21 of its supplementary submission:

> Most importantly, in *FELDA*, **the RM30 million loan was found to have been deducted under Section 33(1) of the ITA as an operating expense**. Hence, even if Section 30(4) had been considered, **the decision in *FELDA* would still be irrelevant to the present Appeal due to the Entirely Distinct Factual Matrix**.
>
> (emphasis added)

[23] In fact, in *Felda Trading*, the deductibility of a loan itself had been cross-referred specifically to s. 33(1) which is separate and distinct than that of s. 33(1)(a) of the ITA which specifically refers to the deductibility of interests on borrowing as an operating expense. Thus, it was clear to us that the interest on the loan itself may be deductible under s. 33(1)(a) of the ITA, while the loan in and of itself may separately be deductible under s. 33(1) of the ITA as an operating expense.

[24] Caveat: Thus, at this preliminary juncture, we must necessarily caveat our judgment in that the portions immediately ensuing from here on are deliberated on the parties' submission, admissions, and impressions to us that the fiat benefit of the debt sum had already been taxed during (X) (in that the taxpayer had not deducted the entire loan sum from its taxable income during (X)). Learned counsel for the Revenue also had not refer to us of any relevant evidence within the record of appeal to show that the taxpayer had deducted the loan sum from its taxable income during (X). Thus, it is only more probable than not that what the parties meant in agreeing that the taxpayer had not claimed a deduction on the loan, was that the loan sum was already put to tax when it was initially disbursed to the taxpayer during (X).

[25] If in case the actuality of the case was the opposite (in that the fiat benefit of the loan was not taxed during (X)), then the same rule of law and principles we deliberate below shall remain relevant and applicable *mutatis mutandis* (of course with the opposite consequence in tax treatment to be applied). With this preliminary caveat in mind, we shall proceed to delve into the substance of this appeal.

[26] Thus, during (X) when the taxpayer was disbursed the fiat benefit of the loan from the creditor/lender, the taxpayer technically 'gained' credit monies (*albeit* in the form of a loan liability) to the sum of the fiat benefit. At this juncture, the taxpayer has a choice to make in its accounting and declaration for the receipt of the fiat benefit during (X):

(i) deduct the loan as operating expense/liability outright: Alike what transpired in the case of *Felda Trading*, the taxpayer there outright deducted a RM30 million loan in its entirety under s. 33(1) of the ITA.

In *Felda Trading*, when the taxpayer there had outright deducted the RM30 million loan sum as an operating expense, the disbursement of the loan sum (in its entirety) had not been yielded to tax; or

(ii) initially treat the loan disbursement as an income (no deduction): In the circumstance that a loan disbursement was not deducted (and was treated as income), it would have meant that the taxpayer was taxed on a liability. It is a rudimentary rule of accounting and even tax, that a liability is neither a gain nor an income. Thus, since the loan debt had been taxed ahead of the repayments of the loan, the taxpayer can 'neutralise' the tax initially imposed on the loan liability, by claiming for deductions (tax releases) on the upcoming loan repayment obligations as and when they fall due.

[27] The logic of the issue is simply this – when the taxpayer was granted the two loans, it acquired both credit monies and debts. In typical accounting sense, a loan is a credit liability and should not be accounted for as a gain or an income. Nonetheless, for income tax purposes, the ins and outs of monies are assessed along specific YA. So, despite the loans being a liability that needs to eventually or gradually repaid later, the factum remains that during (X), the taxpayer obtains or is holding onto the fiat benefit of RM78,462,867 in credit. The eventual or later loan repayments shall be deductible business or operating expense in the relevant YAs when those repayment obligations fall due.

[28] Simply put, a loan debt is technically both a credit gain and liability. In the instance that a loan was not deducted (thereby taxed as an income during (X)), then the disbursement of that loan is treated as a taxable gain during (X). Subsequently, the same loan is a deductible liability later in time when the loan repayments fall due. Thus, (limited and specific to this circumstance) despite the fact that rudimentary accounting would surmise that a loan is a credit debt and liability, the aspect of income tax would comprehend and perceive the same liability and debt differently per the specific YA when the loan was disbursed, and the specific YAs when the loan was gradually repaid. It is already an accepted rule that income tax *per se* would not necessarily follow the accounting or account-keeping practices that a taxpayer practices. The Court of Appeal in *ALF Properties Sdn Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri* [2005] 3 CLJ 936; [2005] 5 MLJ 717 have adopted the SCIT's view on the dissonance between accounting practices and Income Tax:

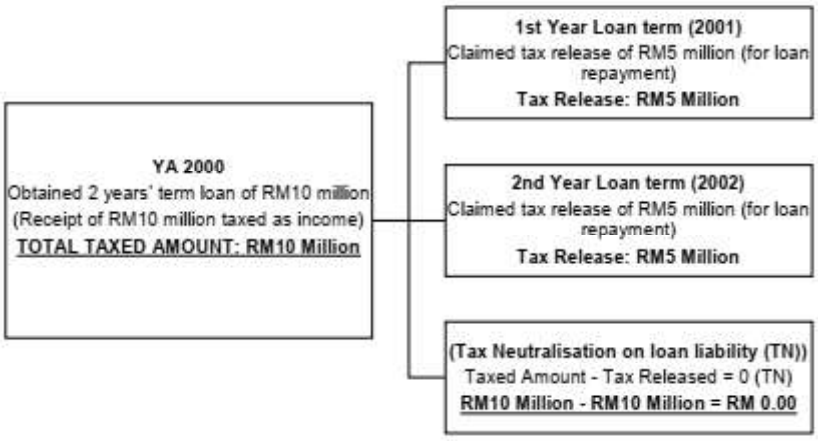
> **It is settled law that Income Tax does not necessarily follow the system of accounting or account-keeping of the taxpayer at all** (see *Bernhard v. Gohan* 13 TC 735). The method of keeping accounts is often a guide but is never conclusive in Income Tax issues (see *Gold Coast Selection Trust Ltd v. Humphrey* 30 TC 228). **The method of accounting does not alter the character of the sum received** (see *The Seaham Harbour Dock Co v. Crook* 16 TC 347). Finally, the practice of accountants, though it were general

or even universal, could not by itself determine the amount of profits and gains of a trade for tax purposes (see *Duple Motor Bodies Ltd v. Ostime* 39 TC 566).

(emphasis added)

[29] If the loan liability was initially treated as income at its disbursement during (X), the tax release (deduction) on the loan sum shall gradually accrue (as a liability for repayment) over the period of the loan term. Thus, true to the loan's nature as a liability (that it is not an income to be taxed) the tax imposed during (X) would gradually be balanced out by gradual tax releases (by deducting the loan repayments against the gross income) over the course of the loan term ("gradual tax neutralisation on loan liability"). This can be illustrated *via* illustration B below:

ILLUSTRATION B


YA 2000
Obtained 2 years' term loan of RM10 million
(Receipt of RM10 million taxed as income)
TOTAL TAXED AMOUNT: RM10 Million
1st Year Loan term (2001)
Claimed tax release of RM5 million (for loan repayment)
Tax Release: RM5 Million
2nd Year Loan term (2002)
Claimed tax release of RM5 million (for loan repayment)
Tax Release: RM5 Million
(Tax Neutralisation on loan liability (TN))
Taxed Amount - Tax Released = 0 (TN)
RM10 Million - RM10 Million = RM 0.00

[30] However, the rules must necessarily change if in case the loan debt was waived during (Y). This is because, if the loan debt was waived during (Y), then the gradual tax neutralisation on loan liability cannot operate (because the taxpayer no longer can claim gradual tax deductions per each and every loan repayment across the loan term). Without the operation of the gradual tax neutralisation on loan liability, the taxpayer would be hung to dry to bear the full brunt of taxation on a loan liability without the benefit of tax releases (on loan repayments) to neutralise the tax imposed on the liability during (X). This is the instance where the issue on whether or not the fiat benefit during (X) was claimed as deduction becomes verily relevant:

(i) deduction made: If the taxpayer indeed did claim for deduction against the fiat benefit during (X) as operating expenses, then the taxpayer had already been afforded tax release against that liability (loan debt). In which case, the taxpayer would have:

A (a) enjoyed tax release (by not being taxed) on the receipt of the fiat benefit during (X); and

(b) enjoyed 'advanced' tax neutralisation on loan liability (as the taxpayer was never taxed for its liability from the outset (*ab initio*)).

B (ii) the taxpayer cannot enjoy both (i) not being taxed on the immediate fiat benefit, and (ii) advanced tax neutralisation on liability at the same time. This is simply because, there will be no tax on liability to be neutralised, if there was never any taxation imposed on the loan sum *ab initio* in (X);

(iii) when the loan debt was waived during (Y), the fiat benefit ceased to C become a liability. Therefore, the taxpayer had enjoyed undue advanced tax neutralisation on loan liability (or tax release/deduction) during (X) (on the account that the liability did not actually materialise or manifest as a liability and instead had become a pure gain). In this instance, then it is only just that the Revenue collects tax against the fiat benefit during D (Y) so as to facilitate the taxpayer's 'refund' of the undue advanced tax neutralisation or tax release; and

(iv) no deduction made: If the taxpayer did not claim for deduction during (X), then the taxpayer would have already faced the full brunt of taxation against the receipt of that fiat benefit. In which case, the E Revenue had already collected the maximum amount of tax against the fiat benefit. In which case, when the loan debt was waived during (Y), to allow the Revenue to again collect against the fiat benefit would be both excessive and redundant.

F **[31]** Understanding the situations above, the parliament had specifically legislated s. 30(4) of the ITA to govern specific circumstances dealing with waiver of debts. The provision reads as follows:

> (4) *Where*:
>
> G (a) *a deduction has been made under subsection 33(1)* in computing the adjusted income of the relevant person from a business for the basis period for a year of assessment (that basis period being *prior to the relevant period*) in respect of any *outgoing or expense (including any sum payable, rent payable or expense incurred of the kind* described in paragraph 33(1)(a), (b) or (c)); or
>
> H (b) any allowance or aggregate amount of allowances has been made under section 42 in computing the statutory income of the relevant person from a business for the basis period for a year of assessment (that basis period being prior to the relevant period) in respect of any expenditure incurred under Schedule 3,
>
> *and the whole or any part of a debt* in respect of any such outgoing, expense, I sum, rent or expenditure *is released in the relevant period, the amount released shall be treated as gross income* of the relevant person from that business *for the relevant period*.
>
> (emphasis added)

[32] The plain and vivid purpose of s. 30(4) of the ITA is to govern the instance of waiver or release of debt so as to avoid duality or redundancy of collection during YA (Y). This is because if the Revenue had already collected tax during YA (X) (tax against RM78 million loan when there was no deduction claimed), and later during YA (Y) also collected tax against the waiver of the same RM78 million, it equals to tax collection against a total of RM156 million. This is certainly excessive as the taxpayer at the very most had only 'obtained fiat benefit' of RM78 million. Despite the technicality that the taxpayer had obtained a loan of RM78 million during (X) and later 'obtained' the release of the RM78 million loan, does not at all mean that the taxpayer had obtained RM78 million twice. The 'obtainment' of the release does not mean a 'repeated gain' of the same RM78 million sum but instead only means that the taxpayer need not fork out RM78 million out of its own monies to repay the lender. The fact remains that if there should be any collection against the loan sum, there should only be one singular collection on the singular net fiat benefit of the RM78 million. It is wrong and rapacious for the Revenue to assume that the incurring of the debt sum as a loan and the eventual waiver of the loan to be two separate and distinct 'gains'. (See illustration C below):

ILLUSTRATION C

Instance	YA (X)	YA (Y)	TOTAL TAXED AMOUNT
Revenue's proposition (in error)	• Taxpayer obtained Loan debt of RM78 million; • Loan debt NOT DEDUCTED and **TAX COLLECTED** against RM78 million	• Creditor waived Loan debt of RM78 million; • **TAX COLLECTED** against RM78 million waived debt	RM156,000,000.00 **(excessive sum of tax)**
Taxpayer's proposition **(S. 30(4) of the ITA)**	• Taxpayer obtained Loan debt of RM78 million; • **IF Loan debt NOT DEDUCTED,** and thus, **TAX COLLECTED** against RM78 million	• Creditor waived Loan debt of RM78 million; • **Waived debt NOT TAXED** against RM78 million	RM78,000,000.00

	• Taxpayer obtained Loan debt of RM78 million; • **IF Loan debt <u>WAS DEDUCTED,</u>** and thus, **<u>tax RELEASED</u>** against RM78 million	• Creditor waived Loan debt of RM78 million; • **<u>TAX COLLECTED</u>** against RM78 million waived debt	RM78,000,000.00

[33] Illustration C above clearly demonstrates the grave error in the Revenue's supposition. The immutable fact remains that there has never been a total sum of RM156,000,000 at play here. No matter how the stones are turned, the Revenue can at most collect against RM78 million as this is the actual fiat sum that is in contention.

[34] Otherwise, if the Revenue still insists on taxing on the waived sum during (Y) (when no tax release (deduction) was claimed or enjoyed during (X) then the appellant-taxpayer would have either:

(i) been deprived of the entitlement for a one-time tax release (deduction); or

(ii) been imposed taxation on the same debt sum/waived sum twice (when the circumstances should justly only allow one singular tax release (during X) and one singular tax collection (during Y)).

[35] For full clarity and ease of understanding, we prepare illustration D below:

ILLUSTRATION D		
	NO DEDUCTION MADE **Annual income of RM100,000.00** Debt incurred: **OPEX Loan of RM50,000.00 ("debt")**	**CLAIM/DEDUCTION MADE** **Annual income of RM100,000.00** Debt incurred: **OPEX Loan of RM50,000.00 ("debt")**
YA (X)	RM100,000.00 + RM50,000.00 = **RM150,000.00 Final adjusted income** **Tax Release :** 0 **Tax on debt :** 1 (on RM50k)	**RM100,000.00 Final adjusted income** (OPEX Loan claimed as debt/liability and deducted from taxable income) **Tax Release :** 1 (on RM50k) **Tax on debt :** 0
YA (Y)	**RM50,000.00 loan/debt waived**	**RM50,000.00 loan/debt waived**
	If waived debt STILL treated as income RM100,000.00 + RM50,000.00 = **RM150,000.00 Final adjusted income** **Tax Release :** 0 **Tax on debt :** 2 (on RM100K)	**If waived debt STILL treated as income** RM100,000.00 + RM50,000.00 = **RM150,000.00 Final adjusted income** **Tax Release :** 1 (on RM50k) **Tax on debt :** 1 (on RM50k)
	If waived debt NOT treated as income RM100,000.00 = **RM100,000.00 Final adjusted income** **Tax Release :** 1 (on RM50k) **Tax on debt :** 1 (on RM50k)	**If waived debt NOT treated as income** RM100,000.00 = **RM100,000.00 Final adjusted income** **Tax Release :** 2 (on RM100k) **Tax on debt :** 0

[36] It should be clear from illustration D above that the appropriate tax treatment should result in (tax release: one & tax on debt: one). This is logically reflective of the immovable fact that since the Revenue had collected against the loan sum (one tax collection) during (X), the Revenue can no longer collect against the same loan sum during (Y) (one tax release):

(i) if in case a deduction was not made during (X) (first tax collection) and the debt waived was still taxed during (Y) (second tax collection), it will lead to a redundant additional taxation on one singular loan sum = (tax release: 0 & tax on debt: 2);

(ii) if in case a deduction was indeed made during (X) (first tax release) and the debt waived is not taxed during (Y) (second tax release), it will lead to the unjust deprivation of tax collection or unjust additional tax release (tax release: 2 & tax on debt: 0);

(iii) if in case a deduction was indeed made during (X) (first tax release) and the debt waived is taxed during (Y) (first tax collection), it will lead to the proper singular tax release during (X) and singular tax collection during (Y) (tax release: 1 & tax on debt: 1); and

(iv) if in case a deduction was not made during (X) (first tax collection) and the debt waived is not taxed during (Y) (first tax release), it will lead to the proper singular tax collection during (X) and singular tax release during (Y) (tax release: 1 & tax on debt: 1).

[37] In fact, if we were to hypothetically agree with the Revenue's supposition that the debt sum was used for capital expenditure purposes ("CAPEX"), such supposition still does not support the Revenue's insistence to impose yet another collection against the waiver of the loan. This is simply for the fact that the taxpayer had not claimed for any deduction during (X). Thus, despite the taxpayer's contention that it had used the loan for operating expenses purposes ("OPEX"), the tax treatment during (X) was still that the OPEX loan was taxed as a CAPEX (income). The Revenue's insistence that the loan sum was CAPEX in nature shall not and never entitle the Revenue to collect beyond the true and actual fiat benefit of RM78 million (which was already collected during (X)) (see illustration E below):

ILLUSTRATION E

NATURE OF LOAN	YA (X) (RM 78 million Loan obtained)	YA (Y) (RM 78 million Loan waived)	PROPER TAX TREATMENT
CAPEX	If the loan is CAPEX in nature, it shall **be taxed** (unless there are capital allowances) **= Loan sum already fully taxed / (TAX COLLECTION)**	Since the loan sum had already been fully taxed, the Revenue is no longer entitled to collect beyond the true and actual fiat benefit of the loan sum **(NO COLLECTION)**	The revenue DOES NOT COLLECT against the waiver during (Y) = Tax collected on RM78 million

OPEX	**DEDUCTION** If the loan is OPEX in nature, it **can be deducted**. If deducted = Loan sum NOT taxed **(TAX RELEASE / NEUTRALISATION)**	Since the loan sum had not been taxed during (X) the Revenue had not yet collected on the fiat benefit of RM78 million. Revenue is entitled to collect against fiat benefit during (Y). It can also be considered as Taxpayer's refund of Tax neutralisation on loan liability **(TAX COLLECTION)**	The revenue COLLECTS against the waiver during (Y) = Tax collected on RM78 million
	NO DEDUCTION If the loan is OPEX in nature, it **can be deducted**. If **NOT** deducted = **Loan sum already fully taxed / (TAX COLLECTION)**	Since the loan sum had already been fully taxed, the Revenue is no longer entitled to collect beyond the true and actual fiat benefit of the loan sum **(NO COLLECTION)**	The revenue DOES NOT COLLECT against the waiver during (Y) = Tax collected on RM78 million

[38] Entirely relevant to the appeal before us, s. 30(4) of the ITA is the sole *lex specialis* specifically addressing and setting the rule on the appropriate tax treatment as to debt ("any sum payable, rent payable or expense incurred of the kind") incurred "prior to the relevant period" which later during the "relevant period", the debt was released. Just because the taxpayer here had not made a deduction during (X) does not at all render the entirety of this *lex specialis* to be either distinguishable or inapplicable to the appeal before us. It was erroneous for both the taxpayer and the Revenue to 'concede' or agree that s. 30(4) of the ITA does not apply to this appeal.

[39] The Revenue's flawed argument was simply that since there was no deduction made during (X), then the 'requisite' under s. 30(4) of the ITA was not met and thus, somehow the provision was inapplicable *in toto*. It was argued that since the provision was inapplicable, the Revenue must necessary fall back to the *lex generalis* or the general tax scheme under s. 4 of the ITA to treat the waived sum. However, this flow of reasoning is utterly erroneous

as it betrays the very fabric of s. 30(4) of the ITA as a deeming (or as the appellant submits, a charging) provision. The deeming provision is painfully plain and clear:

(i) if a debt was deducted during (X) (prior YA), then the debt, when waived during (Y), shall be deemed/charged as taxable income; or

(ii) if a debt was not deducted during (X) (prior YA), then the debt, when waived during (Y), shall not be deemed/charged as taxable income.

[40] It is excruciatingly clear from the above that the provision remains entirely relevant and applicable even when the taxpayer did not claim for deduction during (X). It is equally perplexing when the taxpayer also conceded that the provision did not apply. However, contrary to the taxpayer's accedence, the taxpayer in its additional submission on the provision still insisted that the *lex specialis* rule to still apply and thus the waived sum cannot fall within the general law of s. 4 of the ITA. Therefore, the only logical summation of the taxpayer's submission would be that the 'charging effect' of s. 30(4) of the ITA does not apply (due to the non-deduction), but the provision as a 'deeming' provision shall still remain relevant and applicable to determine the proper tax treatment upon the waived sum. Succinctly, the inverse applies – that since the debt sum was fully taxed during (X) (no deduction), thus the waived sum shall not be treated as taxable income in during (Y).

[41] Another error emanating from the Revenue's interpretation was the Revenue's misguided understanding on the list of deductibles under s. 33(1) of the ITA. Firstly, the Revenue argued in para 20.2 of its additional submission that if a loan debt obtain/incurred was used for CAPEX purposes, then the loan debt is deductible only if the CAPEX purposes fall within the class of "capital allowances" under Schedule 3 of the ITA:

> A loan may be a capital expenditure if it is used for purpose of buying the company's capital assets. If the loan is used for purchasing plants and machinery, the capital expenditure would be eligible for capital allowance under Schedule 3 of the ITA 1967. In such a case, if the loan were later released and a claim for capital allowance under Schedule 3 is made, the released loan would be treated as gross income of the company under s. 30(4) ITA 1967. However, if the company did not claim any capital allowance for the purchase, the released loan cannot be treated as gross income of the company at all. This is because the loan is the company's capital that was utilized for purchasing capital assets. Thus, it falls outside the scope of s. 30(4) as well as s. 22 of ITA 1967.

[42] It needs to be noted that the Revenue had not made any distinction between the principal loan amount and the interest amount when addressing a loan that is CAPEX in nature. Under the general tax scheme of Malaysia, a CAPEX is not deductible as it is not a business expense in the ordinary course of day-to-day business of the taxpayer to generate income. However,

if the loan's CAPEX nature falls within the ambit of the capital allowances under Schedule 3 of the ITA, then it can become a deductible. Again, it must be stressed that the Revenue (in respect of CAPEX loan) agrees that the CAPEX loan sum can become deductible (not just interest) if it falls within Schedule 3.

[43] The Revenue concluded that if the CAPEX loan was deducted during YA (X) then by virtue of s. 30(4) of the ITA, the waived CAPEX loan must be treated as taxable income during YA (Y).

[44] However, for some baseless and arbitrary reason, the Revenue contended a totally contrary stance when it comes to loan debt that is used for purposes of business or operational expenses or OPEX in nature. Against the general rule that an OPEX is generally deducted from the gross income to identify the adjusted income to be taxed, the Revenue now insisted that the deductibility of OPEX loans suddenly and baselessly must be distinguished between the principal loan sum and the interest sum. For some reason only known by the Revenue (which we do not follow), the Revenue limited the scope of deductibility for OPEX loans to only the interest sum on the OPEX loans and not the entire OPEX loan. This arbitrary contention was laid down in para. 20.3 of the Revenue's additional submission:

> On the other hand, if the loan were used for the company's operating expenditure, such as to pay for workers' remuneration and purchase of the company's stock in trade, any interest paid for the loan is deductible as business expenses under s. 33(1) ITA 1967. Thus, if the company had claimed the interest as deduction under s. 33(1) and the loan is later released, the released amount together with the interest would be treated as gross income under s. 30(4) ITA 1967.

[45] This excerpt of the Revenue's additional submission was in direct contradiction with what learned counsel for the Revenue had submitted before us during the hearing of the appeal. As we have identified earlier above, learned counsel for the Revenue, upon being asked by the panel, had contended that both the loan and the interest (if deducted and later waived) can be treated as gross income under s. 30(4) of the ITA. Considering that the pre-condition of tax collection under s. 30(4) of the ITA is that the taxpayer must have claimed for deduction of that debt, then learned counsel for the Revenue had admitted that both the loan and interest can be deducted under s. 33(1) of the ITA.

[46] The Revenue's self-contradiction was jarring to say the least. The burning rhetorical question remains: why can a CAPEX loan be deducted in its principal while an OPEX loan can only be deducted its interest sum? In fact, this summation from the Revenue was also strikingly contradictory to the general scheme of taxation of Malaysia in that OPEX is deductible while a CAPEX is not. It is seemingly arbitrary from the Revenue to shift the goalpost so as to yield the law in favour of collection. By right and by the

Revenue's own logic, if the loan debt was OPEX in nature, then there should be more reason that the entire loan debt be a deductible and not only the interest sum.

[47] We identified that the Revenue's grave misapprehension of the law above was borne out of Revenue's skewed reading of ss. 33(1) and 33(1)(a) of the ITA. For convenience, the two provisions respectively read:

> Adjusted income generally
>
> 33. (1) Subject to this Act, **the adjusted income** of a person from a source for the basis period for a year of **assessment shall** be an amount ascertained by **deducting from the gross income** of that person from that source for that period **all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source, including**:
>
> (a) subject to subsection (2), any sum payable for that period (or for any part of that period) by way of interest upon any money borrowed by that person and:
>
> (i) employed in that period in the production of gross income from that source; or
>
> (ii) laid out on assets used or held in that period for the production of gross income from that source.
>
> (emphasis added)

[48] For some reason that beguiled us, the Revenue misunderstood from the provision above, that somehow, the law only allows deduction upon the interest sum of an OPEX loan despite the fact that the word "including" used in the statute was neither exclusionary nor limiting. In truth and in actuality, the provision is far more inclusive than it is exclusionary than what the Revenue was supposing. Since the word used is "including", then the provision effectively allows for the deductibility of both the entire principal loan sum ("all outgoings and expenses" – s. 33(1) of the ITA) including the interest sum ("any sum payable ... by way of interest" – s. 33(1)(a) of the ITA). Fact of the matter remains that the very precedent that the Revenue staunchly seeks to follow (the *Felda Trading* case) had dealt with the instance where the entire RM30 million loan in and of itself was deducted under s. 33(1) of the ITA.

[49] Thus, the Revenue failed to explain, and we are unable to ascertain any shred of basis or law for the Revenue to limit the deductibility of OPEX loans only as to its interest sum.

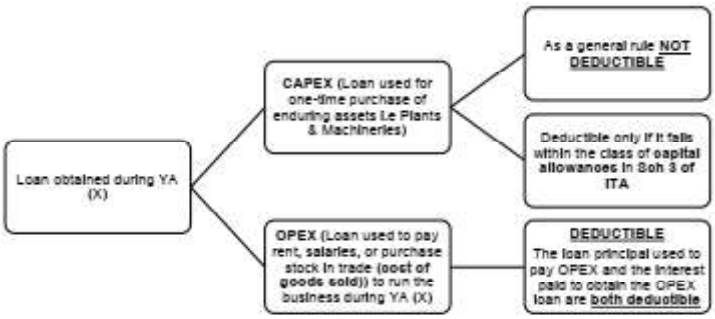
[50] It just does not make for logical business and financial sense. If hypothetical credit company A in a given YA had generated RM900,000 of income while incurring a liability of a loan of RM100,000 (at 5% interest *per annum*), credit company A's income remains at RM900,000. The RM100,000 loan is not automatically a taxable income or credit gain as it is simply a debt. Whether or not the loan debt should be taxed in that YA

shall depend on whether the loan debt was CAPEX or OPEX in nature. If the loan debt was CAPEX in nature, then the loan debt is taxable (unless it falls within the class of capital allowance under Schedule 3 of the ITA). If the loan debt was OPEX in nature, then the loan debt can be tax released (as a deductible business expense).

[51] It does not make sense for credit company A to only be limited to treat RM5,000 (5% interest) as a deductible and to declare and treat a RM100,000 OPEX loan as an income. There is no rhyme and logic to make this distinction between the principal OPEX loan and the interest sum on the OPEX loan. It does not stand to good reason that credit company A should be taxed on the loan debt when credit company A needed the loan sum (and had used the loan sum) to operate its business (OPEX).

[52] There is no logical basis for the Revenue to tax the principal OPEX loan and to allow deduction only upon the interest on the OPEX loan. We fail to see and comprehend the basis, need, and justification of this perplexing tax treatment. An OPEX is an OPEX, and an OPEX is certainly non-taxable (and deductible) in its entirety (not just the interest incurred to obtain the OPEX loan). There is no basis or justification to distinguish between the principal and the interest (see illustration F below):

Illustration F


Loan obtained during YA (X)
CAPEX (Loan used for one-time purchase of enduring assets i.e Plants & Machineries)
As a general rule NOT DEDUCTIBLE
Deductible only if it falls within the class of capital allowances in Sch 3 of ITA
OPEX (Loan used to pay rent, salaries, or purchase stock in trade (cost of goods sold)) to run the business during YA (X)
DEDUCTIBLE
The loan principal used to pay OPEX and the interest paid to obtain the OPEX loan are both deductible

[53] The Court of Appeal (although there only dealt with the deductibility of the interest on an OPEX loan) very recently in *Ketua Pengarah Hasil Dalam Negeri v. ABTP Marketing Sdn Bhd* [2023] CLJU 2547; [2023] 1 LNS 2547; [2024] 3 MLJ 1 had restated the principle that a loan incurred in the purchase of raw material to generate Revenue is not CAPEX in nature:

> That was the case of ABTP as well before the SCIT. This is the reason the *High Court found that the loan was for the purpose of generating Revenue as it relates to the costs of goods sold and that it did not add to the capital structure of ABTP. We shall therefore affirm the decisions of the SCIT and the High Court* that found that the 5% interest on the loan *was a deductible expense*.
>
> (emphasis added)

[54] Now, even if we were to follow the Revenue's argument that the loan monies were not OPEX in nature (as the loans were not used to 'purchase' stock in trade and were already the taxpayer's stock in trade), the immovable fact remains that the taxpayer had to incur a loan debt to 'have' stock in trade. Perhaps the purchase transaction is not the *locus classicus* currency exchanged for stock in trade *per se*, but the net effect remains the same – in that the incurring of the loan debt was used to obtain (or to have) stock in trade to be traded for generating Revenue (and therefore shall necessarily be considered a deductible operating expense).

[55] There is no reason for us to differentiate the taxpayer from other typical forms of businesses who deal with tangible goods or stock. It does not make for good sense that a credit service business (whose stock in trade is monies) to not be able to take a deductible credit. If paper company A obtained loan or credit of RM100,000 to purchase rolls of paper sheets to be processed and made into stock in trade to be traded, that loan is OPEX in nature (deductible). If credit company B obtained loan or credit of RM100,000 to have loan or credit products in stock to be traded, it should be deemed that the loan is OPEX in nature.

[56] The existence or absence of a 'purchase intermediary' does not detract from the net effect that the loan is utilised for obtainment of a product (stock in trade) (which is cost of goods sold) for the purposes of generating Revenue and thereby OPEX in nature.

[57] In any case, even assuming we were wrong on the categorisation of the loan debt as an OPEX (or even CAPEX), the substrate of the appropriate tax treatment remains unmoved in that the Revenue ought not be allowed to redundantly tax on the same fiat benefit twice. Thus, since the fiat benefit in the debt sum had already been taxed during (X), the Revenue had no business to tax the debt sum again when it was waived during (Y). We reiterate again that the disbursement of the loan in (X) and the eventual release of the loan in (Y) does not at all mean that the taxpayer was paid (or had enjoyed) the same fiat benefit twice.

Our Decision

[58] By and large, our findings and sentiments had already been laid down in our address and simultaneous deliberation on the facts and the prevailing law applicable in the appeal before us. Nonetheless, for the sake of clarity we will clearly pen down our decision by gradually answering the following issues:

(i) issue 1: Whether or not the learned judge and the SCIT was correct to find that s. 30(4) of the ITA irrelevant and inapplicable in the appeal before us;

(ii) issue 2: whether or not the learned judge and the SCIT was correct to apply the *lex generalis* in ss. 4 and 22 of the ITA in the case for waiver of debt;

(iii) issue 3: whether or not the learned judge and the SCIT was correct to find that the Revenue was entitled to impose a second tax collection against the waived debt during (Y) despite having collected against the loan sum during (X); and

(iv) issue 4: whether or not the categorisation of the loan debt (as CAPEX or OPEX) in the specific circumstance of this case would carry any material impact against the appropriate tax treatment.

Issue 1: Whether Or Not The Learned Judge And The SCIT Was Correct To Find That Section 30(4) Of The ITA Irrelevant And Inapplicable In The Appeal Before Us

[59] In view of all of our deliberations in the previous heading, we hereby answer issue 1 in the resounding negative. The learned judge and the SCIT had certainly erred in finding that s. 30(4) of the ITA irrelevant and inapplicable in the appeal before us. As we have explained *in extenso* in the previous heading, a deeming or charging provision does not automatically become inapplicable just because the facts of the case might differ from the proviso in that deeming provision. The charging 'effect' of s. 30(4) of the ITA might not apply to yield the waiver to tax but the underlying rule, principle, and provisos of the provision still applies.

[60] A plain and simple example would be the procedural law on service of cause papers or legal instruments. The law prescribes the requisites and criteria in order for a service to be deemed 'proper' or 'perfected'. The provisions do not expressly prescribe the 'inverse' (being the criteria of improper or imperfect service). Thus, if the facts of a given case 'differs from' or do not satisfy the requisites and provisos of a proper service it does not at all mean that the same provisions become inapplicable. The provisions very well were still relevant and applicable to deem that the service was improper and imperfect.

[61] Similar in the appeal before us, just because the taxpayer did not claim for a deduction during (X) as per the proviso in s. 30(4) of the ITA, it does not at all mean that the provision becomes inapplicable *in toto*. The provision very well still was relevant and applicable for the court to identify the proper tax treatment in the instance of waiver of debt. It was as simple as that the 'inverse' applies. If there was deduction in (X), then there shall be tax collection in (Y). Inversely, since the taxpayer did not claim deduction in (X), then there shall be tax release in (Y).

[62] We find that that the Court of Appeal decision in *Ketua Pengarah Hasil Dalam Negeri v. Bandar Nusajaya Development Sdn Bhd* (2016) MSTC 30-117 most instructive in the appeal before us. *Albeit* the Court of Appeal in *Nusajaya* dealt with the waiver of interest accrued for a loan (and not the waiver of the principal loan in and of itself), the factum remained that the Court of Appeal there dealt with the core issue of waiver of debt. It was

exceedingly astute of the Court of Appeal to identify that s. 30(4) of the ITA was the *lex specialis* that should take precedence over the general laws in ss. 4 and 22 of the ITA, lest the Parliament would have legislated in vain (which the Parliament does not). The Court of Appeal agreed with the High Court's findings in that:

> Had the Parliament intended that all releases of debt are to be subjected to income tax irrespective of whether it had been deducted against a business source or otherwise, then the Parliament would have specified it clearly in section 30(4) of the ITA.
>
> Parliament does not enact laws in vain and it must be because s. 30(4) was needed despite the existence of s. 22(2)(a) which clearly shows that it does not allow for the inclusion of release of debt in determining a taxpayer's income.

[63] The Court of Appeal proceeded to conclude the following in its own words:

> In our view, there is no room for adopting the purposive approach to interpret the words ... in section 22 ... **for to do so would render section 30(4) of the ITA superfluous and redundant and this could not have been the intention of Parliament as Parliament does not pass law in vain.**
> (emphasis added)

[64] We do not hesitate to disagree with the Revenue's insistence *ad nauseam* to rely on the SCIT decision in *Felda Trading*. We have critically perused SCIT's decision in *Felda Trading* and can clearly identify that the SCIT decision there was severely wanting and distinguishable from the appeal before us:

(i) the SCIT's decision in *Felda Trading* was clearly decided in *per incuriam* without a spec of mention of s. 30(4) of the ITA. The SCIT had not even addressed its mind on the provision and had directly (without any explanation or justification) applied s. 4 of the ITA to the issue of waiver of debt; and

(ii) distinguishable from the appeal before us, the RM30 million loan that was eventually waived in *Felda Trading* was already deducted in (X) as an OPEX. Thus, the facts in the appeal before us was diametrically dissimilar to the facts in *Felda Trading* (in that the loan sum was not deducted during (X).

Issue 2: Whether Or Not The Learned Judge And The SCIT Was Correct To Apply The Lex Generalis In Section 4 And Section 22 Of The ITA In The Case For Waiver Of Debt

[65] Considering our negative answer in issue 1, it can only necessarily flow that we answer issue 2 in the negative. The learned judge and the SCIT were in grave error to apply the *lex generalis* in ss. 4 and s. 22 of the ITA in the case for waiver of debt. Both s. 4 and s. 22 of the ITA are absolutely silent

and do not provide any proper mechanism to avoid tax redundancy in instances of waiver of debt. Hence the exact reason the Parliament saw it fit to legislate s. 30(4) of the ITA. Had the Parliament intended that the taxpayer ought to be imposed redundant tax on the waiver in (Y) notwithstanding the fact that the taxpayer had not deducted the loan (and was already taxed) during (X), then the Parliament would not even have drafted s. 30(4) into the statute.

Issue 3: Whether Or Not The Learned Judge And The SCIT Was Correct To Find That The Revenue Was Entitled To Impose A Second Tax Collection Against The Waived Debt During (Y) Despite Having Collected Against The Loan Sum During (X)

[66] We have at long lengths explained the plain and immutable rule that the Revenue ought not be allowed to impose redundant tax so as to enable the Revenue to make a collection that goes beyond the actual fiat benefit that was enjoyed by the taxpayer.

[67] The ITA as a statute had already identified the futility in the exercise of determining whether the waiver of a debt is a 'taxable gain' or otherwise. As can be seen from the clear and unequivocal language of s. 30(4) of the ITA, the sole determinant (on whether a waiver during (Y) ought to be treated as gross income or not), is whether the loan debt was deducted in (X) or not. At the material point in time during (Y), the law was not concerned whether or not the loan was OPEX or CAPEX in nature.

[68] The prevailing nature of the loan (whether CAPEX or OPEX) was only relevant during (X) when the loan was first disbursed. During which time, the taxpayer could either deduct the disbursed loan for its OPEX purposes, or tax the disbursement as income for CAPEX purposes. Subsequent to the tax treatment during (X), the only factor relevant during (Y) was whether or not the loan sum had already been taxed during (X). If tax had been collected during (X) (no deduction claimed) then the Revenue ought not be allowed to impose redundant tax against the same gain during (Y). If tax had not been collected during (X) (deduction claimed) then the Revenue ought to be allowed to collect tax against the loan sum during (Y).

[69] The above considered within this sub-heading, we hereby answer issue 3 in the negative in that learned judge and the SCIT had fallen in grave error in finding that the Revenue was entitled to impose a redundant second tax collection against the waived debt during (Y) despite having collected against the loan sum during (X).

A *Issue 4: Whether Or Not The Categorisation Of The Loan Debt (As CAPEX Or OPEX) In The Specific Circumstance Of This Case Would Carry Any Material Impact Against The Appropriate Tax Treatment*

[70] Considering our negative answer in issue 3, it can only naturally follow that we answer issue 4 also in the negative. The categorisation of the B loan debt (as CAPEX or OPEX) in the specific circumstance of this case would not carry any material impact against the appropriate tax treatment. This is simply for the fact that we mentioned earlier that the loan categorisation was only relevant during (X) when the taxpayer would have to identify whether or not the loan disbursed should be deducted for tax C release. Subsequent to that in (Y), the law is only concerned on whether or not the loan sum was already taxed during (X).

[71] Thus, as we have mentioned earlier, even if we were wrong in our categorisation of the loan's true nature and purpose, the appropriate tax treatment during (Y) remains unmoved. Whether or not the loan sum was D CAPEX or OPEX in nature, what was relevant to be considered was whether or not the loan sum was taxed during (X). Since the loan sum was already taxed during (X), then the Revenue had already fully taxed the full fiat benefit on the loan disbursed. Thereby the Revenue can no longer impose yet another tax on the same amount during the waiver in (Y).

E **[72]** In light of our resounding negative answers in all issues 1 to 4, we hereby find that there are clear merits in the appeal before us. Therefore, we hereby allow this appeal. The High Court's decision is hereby set aside, and thus all of the Revenue's notices for additional assessments and penalties are unlawful and invalid.

F **[73]** We hereby consequentially order that all of the monies already paid (if any) in satisfaction of the Revenue's unlawful notices for additional assessments be refunded to the taxpayer within 60 days from the date of service of the sealed order.

G **[74]** In the same vein we also order that all of the monies already paid (if any) in satisfaction of the Revenue's unlawfully imposed penalties be refunded the taxpayer within 60 days from the date of service of the sealed order.

[75] In view of the fact that substantial analysis of the complex legal H proposition involved in this appeal is carried out by this court, we shall exercise our discretion not to award costs. Parties to bear their own costs.

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